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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 3rd January 2012

No. 30—IR/ID-21/2010-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 9th December 2011 in I. D. Case No. 9 of 2010 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Executive Engineer, Rural Works Division, Chandrasekharpur, Bhubaneswar and its Workman Shri Tara Prasad Bhanja was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 9 OF 2010

The 9th December 2011

Present:

Shri Raghbir Dash, O.S.J.S. (Sr. Branch),
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between:

The Management of Executive Engineer, .. First Party—Management
Rural Works Division,
Chandrasekharpur, Bhubaneswar.

And

Shri Tara Prasad Bhanja, .. Second Party—Workman
S/o Shri Fakir Charan Bhanja,
At/P.O. Haladiagarh, Khurda.

Appearances:

Shri Gouri Sankar Sahoo, .. For the First Party—Management
Authorised Representative.

Shri T. P. Bhanja .. For the Second Party—Workman himself

AWARD

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act') made by the Government of Odisha in the Labour & Employment Department vide their Order No. 2012—ID-21/2010-LE., Dt. 11-3-2010. The Schedule of reference runs as follows :—

"Whether the refusal of employment to Shri Tara Prasad Bhanja, Casual Clerk-cum-Typist by the Executive Engineer, Rural Works Division, Chandrasekharpur, Bhubaneswar with effect from the 1st June 2009 is legal and/or justified ? If not, to what relief Shri Bhanja is entitled ?"

2. The case of the second party workman is that with effect from the 6th March 1993 he was engaged as a Clerk-cum-Typist and assigned duties under the direct control and supervision of the Junior Engineer, Rural Works Section, Khurda which is under the ultimate control of the first party Executive Engineer, Rural Works Division, Bhubaneswar, Khurda. The first party management used to pay him wages at the prevailing rate of minimum wages as prescribed by the Government of Odisha from time to time. Though he had been working since 1993 his name was not therein the gradation list of D.L Rs./Casual workmen working under the first party. Having come to know this he made a representation to the management on 23-4-2002 and thereafter, his name was enlisted in the list prepared by the Junior Engineer and certified by the Asst. Engineer, Rural Works Section, Khurda. But, surprisingly his name was not included in the gradation list which the management submitted to the State Government. Therefore, he made several representations but no action was taken by the management. Finding no alternative he made a representation to the District Labour Officer, Khurda on 16-4-2007. Having come to know this the management bore grudge and verbally refused employment to him with effect from the 1st June 2009. According to the second party, he had worked continuously from 6-3-1993 to 31-5-2009 without any break and yet the management did not comply with the provisions of Section 25-F of the Act. That apart, co-workers junior to him are still continuing under the first party. Thus, his retrenchment being in gross violation of the statutory provisions of the Act he is entitled to reinstatement with full back wages. His further prayer is to include his name in the gradation list of D.L.Rs./Casual workmen.

3. In the written statement the first party has pleaded that there is no record showing the engagement of the second party as a Clerk-cum-Typist. There is also no record to show that any payment of wages was ever made to him. Regarding the gradation list, it is contended that although the name of the second party did appear in a list submitted by the Rural Works Section, Khurda, but there is no record in the Division Office of the first party showing that he was ever engaged by the management vide Letter No. 174, Dt. 11-2-2002, the S.D.O., Rural Works Subdivision, Khurda had submitted a report showing the names of the existing D.L.Rs./N.M.Rs./H.R. staff on the Rolls but name of the second party was not there in the list. Vide Notice No. 26, Dt. 4-1-2007 the first party issued a draft seniority list of D.L.Rs./N.M.Rs. working in the Division prior to 12-4-1993 which was notified and objections, if any, were invited. However, the workman had never submitted any objection that his name was not therein the list. On being confirmed from the office of the concerned S.D.Os. of different Subdivisions under the first party a final gradation list was prepared and submitted by the first party to the Government. Since the first party had never engaged the second party his name was not included in the list.

4. Basing on the pleadings of the parties, the following issue has been settled in terms of the reference :

ISSUE

Whether the refusal of employment to Shri Tara Prasad Bhanja, Casual Clerk-cum-Typist by the Executive Engineer, Rural Works Division, Chandrasekharpur, Bhubaneswar with effect from the 1st June 2009 is legal and/or justified ? If not, to what relief Shri Bhanja is entitled ?

5. The second party has examined himself as W.W. No. 1 and has exhibited documents marked Exts. 1 to 11. On the other hand, the first party has examined three witnesses and has exhibited documents which are marked Ext. A series. M.W. No. 1 is the present Head Clerk of the office of the first party. M.W. Nos. 2 and 3 are two Junior Engineers who were posted in the Rural Works Section, Khurda during the period from 2003 to 2010.

FINDINGS

6. Though in the Schedule of reference it is mentioned that the second party was under the employment of the first party, the letter denies to have ever engaged him as a workman. Therefore, at the outset it is necessary to thrash out whether the second party was ever employed by the first party to work as a Casual Clerk-cum-Typist.

No appointment order is placed on record. The workman had made a prayer to direct the first party to produce documents such as hand receipt payment particulars and Imprest Cash Accounts maintained in the Rural Works Subdivision, Khurda. The management has produced the Imprest Cash Account for the entire period from June 1993 to December 2010. Those have been marked as Ext. A series. Nowhere is there any indication in the Imprest Cash Account that payment of wages was ever made to the second party. The second party did not make any prayer to cause production of the Attendance Register/Muster Roll. During cross-examination he has stated that he used to receive his wages against hand receipts issued by him to the Junior Engineer, Khurda Section. Nowhere has he disclosed as to who had given him appointment as a Casual Clerk-cum-Typist. He has simply stated that he was assigned duties under the direct control and supervision of the Junior Engineer, Khurda Section. The second party suggested to M.W. No. 1, but denied by the latter, that since 2008 till May 2009 the former used to get Rs. 2,340 every month, @ Rs. 90 per day as his daily wages. Though regular payment is claimed by the second party till May 2009, the Imprest Cash Account maintained by the first party which is supposed to reflect each item of expenditure, does not reflect that any amount was ever paid to the second party. Though the second party claims to have worked continuously from March 1993 till May 2009 with wages regularly paid to him, he has failed to bring any document on record showing that he was engaged by the first party and he used to receive wages from the establishment of the first party. He has also failed to bring on record any documentary evidence showing marking of his attendance even in any part of the entire period of employment claimed by him.

Instead of relying on documents like Appointment Order, Attendance Register and entries in the Accounts Registers the second party has relied on some other documents which seem to have originated from the office of the Junior Engineer/Asst. Engineer, Rural Works Section/Subdivision, Khurda which is under the administrative control of the first party. Ext. 2 is a statement signed by the Junior Engineer as well as the Asst. Engineer of Khurda Section/Subdivision which reflects that the second party was working as a Clerk-cum-Typist in the Subdivisional Office and his date of engagement is 6-3-1993. Ext. 8 which is an enclosure of Ext. 7 is also a statement signed by the Junior Engineer, Rural Works Section wherein it is mentioned that the second party was engaged in typewriting work in the Subdivisional Office and his date of first engagement is 6-3-1993. Also in Ext. 9, a gradation list, which is signed by the Junior Engineer, Rural Works

Section, Khurda the same facts are mentioned. Ext. 10 series and 11 series are copy of some official letters originating from the subdivision office which are, admittedly, typed or written by the second party. These letters are of different dates starting from 1-2-2002 till 25-2-2009. Relying on all these documents the second party claims to have adduced sufficient evidence to prove his case that he had been working continuously in the establishment of the first party since 6-3-1993 till the date of the alleged retrenchment. In order to discredit these documents the management has examined the then Junior Engineers of the Rural Works Section, Khurda as M.Ws. 2 & 3.

7. Now, let the reliability of these documents be examined. Explaining as to under what circumstances the name of the second party has appeared in Ext. 2, a *pro forma* signed by M.W. No. 2, the witness i.e. M.W. 2 admits to have issued Ext. 2 but takes the plea that when he prepared the document he had not verified any office records to get himself confirmed that the second party had been actually working since 6-3-1993. He has stated that he submitted Ext. 2 to the Assistant Engineer, Khurda Subdivision merely on an application made by the workman. M.W. 2 has further stated that he was posted as the Junior Engineer in the Rural Works Section, Khurda from September, 1998 to June, 2003. He says that during that period no payment was made to the second party from any funds allotted by the Government. According to him, he used to engage the second party as and when required to type out letters and for that he used to make payment from his own pocket. As it appears from his testimony the witness was not attached to the Section Office prior to 1998. Therefore, when he has prepared Ext. 2 without verifying any official records, then it can be presumed that the information contained in Ext. 2 is not authentic. When he says that Ext. 2 was prepared by him and submitted before his Assistant Engineer merely on an application made by the second party, it is to be presumed that M.W. No. 2 was officially not required to prepare a statement like Ext. 2. The second party has obtained the copy of the statement (Ext. 2) but he has not obtained the copy of any such document showing that the statement marked Ext. 2 was officially forwarded to the first party, Executive Engineer in due course of official business. Ext. 2 came into existence on 16-1-2003. The second party claims to have worked continuously since 6-3-1993. There is no document on record that originated in between 1993 and 2003 showing that the second party had actually been working since 1993. The second party has exhibited a series of letters marked Ext. 10 series and 11 series. He has obtained these letters (xerox copies) by making an application under the Right to Information Act. He claims and it is not denied by the other side that these are the letters which he had typed or written under the instructions of the Junior Engineer/Asst. Engineer, Khurda Section. These letters are of different dates starting from 1-2-2002 to 25-2-2009. The second party has not exhibited any other letters of similar nature to show that he had typed or written such letters prior to 2002. Thus, there is no material to show that the second party was engaged in the Section Office prior to 2002. For all these reasons it is very difficult to place reliance on Ext. 2.

Coming to Exts. 8 and 9, the evidence of M.Ws. 2 and 3 makes it clear that these two documents have been prepared on the basis of facts stated in Ext. 2. In Ext. 8 the Junior Engineer (M.W. 3) has certified that the second party was engaged as a job contract worker on "Non-HR payment" basis. M.W. No. 3 explains that "Non-HR payment" means payment made to the workman not against any hand receipts, which is the official mode of making payment to the D.L.Rs./N.M.Rs. He says that payment on Non-HR basis is not made from out of the Government fund. It implies that the second party was not receiving wages from out of the Government fund. This finds support from the fact that the Imprest Cash Accounts marked Ext. A series do not reflect any payment made to the second party during the entire period from 6-3-1993 to 1-6-2009. M.W. 2 says that payment of wages to the D.L.Rs./N.M.Rs. are always made against hand receipts and the amount so paid is entered in the Cash Book and the hand receipts are sent to the office of the Executive Engineer where Imprest cash account Register is maintained. As already stated, there is no entry in the Imprest Cash Account Register showing payment of wages to the second party which supports the oral evidence of M.Ws. 2 and 3 that by making payment from their own pocket they used to avail the services of the second party.

Ext. 9 is signed/issued by M.W. 3. He says that on the request of the second party he had issued it so as to enable him to use it as an Experience Certificate. He says that he did not submit Ext. 9 to any of his Authorities. He further says that Ext. 9 was issued on the basis of the entries in Ext. 2. Thus, from his evidence it transpires that Ext. 9 is not part of any official correspondence. Facts stated in Ext. 9 were not obtained from any office records. Since it is issue on the basis of the entries found in Ext. 2 and Ext. 2 being found not reliable, no reliance can be placed on Ext. 9 as well.

The vital documents are Exts. 2, 8 & 9 wherein officers subordinate to the first party Executive Engineer have certified that the second party was working in the Subdivision/Section Office and the date of his first engagement is 6-3-1993. But the officers who have prepared these documents are examined by the management and from their testimony it transpires that Exts. 8 and 9 have been prepared on the basis of facts stated in Ext. 2 which is found to be not reliable. Therefore, no reliance can be placed on these documents.

8. It is not denied that the second party was often engaged in the Section Office to do the job of a Typist. M.Ws. 2 and 3 say that they used to engage the second party in their personal capacity by making their own arrangement to pay him some amount for the work he used to render. The management has produced official records showing that no amount had ever been paid to the second party from out of the Government fund. A close scrutiny of the letters marked Exts. 10 series and 11 series reflect that most of the letters are found typed or written only in the last week of a given calendar month and in almost each of the calendar months very few letters were typed/written by the second party. The second party does not claim that there were other letters which he had prepared but those are not exhibited. From the above facts it may be presumed that the second party used to be engaged mostly during the last week of each calendar month to type or write some letters on being required by the Junior Engineer/Assistant Engineer of the Section.

9. Taking the entire evidence into consideration this Tribunal is of the considered view that the second party was not employed officially by the first party or by any of his Subordinate Officers. He was working in the office occasionally but as per some private arrangement made by the Section Officer/Asst. Engineer or Khurda Subdivision. There was no employer-employee relationship between the parties.

10. As it is not established that there was employer-employee relationship between the parties the question of refusal of employment to the second party does not arise. Therefore, the refusal of employment to the second party with effect from the 1st June 2009 is neither illegal nor unjustified. Consequently the second party is not entitled to any relief.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH

9-12-2011

Presiding Officer

Industrial Tribunal, Bhubaneswar

RAGHUBIR DASH

9-12-2011

Presiding Officer

Industrial Tribunal, Bhubaneswar

By order of the Governor

T. K. PANDA

Under-Secretary to Government